

**Obj. Deadline: Jan. 26, 2019 at 4:00 p.m. ET**  
**Hearing Date: Feb. 4, 2019 at 10:00 a.m. ET**

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*COUNSEL TO LAKIN TIRE WEST INCORPORATED*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, et al.,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

**LAKIN TIRE WEST INCORPORATED'S LIMITED OBJECTION AND  
RESERVATION OF RIGHTS TO DEBTORS' NOTICE OF CURE COSTS AND  
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES  
IN CONNECTION WITH GLOBAL SALE TRANSACTION**

Lakin Tire West Incorporated ("Lakin Tire") by and through its undersigned counsel, hereby files this Limited Objection and Reservation of Rights (the "Objection") to Debtors' Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (the "Notice," Dkt. No. 1731). In support of its Objection, Lakin Tire states as follows:

1. Lakin Tire is a California corporation with its principal place of business in Santa Fe Springs, California. Lakin Tire is in the business of collecting and recycling scrap tires and serves more than 6,500 tire retailers across the United States.

2. Lakin Tire and Debtor Sears, Roebuck and Co. (“Sears Roebuck”) are parties to a Tire Removal and Disposal Services Agreement, effective as of January 1, 2017 (the “Tire Collection Agreement”). The Tire Collection Agreement has a three-year term, unless terminated earlier pursuant to Section 4.2 of the contract. Neither party has terminated the Tire Collection Agreement and it remains in effect, executory and unexpired.

3. Pursuant to the Tire Collection Agreement, Lakin Tire provides tire collection, removal, reclaiming, transportation, recycling and disposal services to Sears Auto Centers at more than 200 Sears locations across the United States. In exchange for those services, Sears Roebuck pays fees to Lakin Tire on a per-tire basis.

4. As of the Petition Date, the outstanding fees due from Sears Roebuck to Lakin Tire were \$99,019. Those fees have not yet been paid.

5. After the Petition Date, Lakin Tire has continued to provide services to Sears Roebuck pursuant to the terms of the Tire Collection Agreement.

6. Lakin Tire has sent invoices to Sears Roebuck for postpetition services rendered pursuant to the Tire Collection Agreement through December 31, 2018. The outstanding balance due to Lakin Tire under the postpetition invoices is \$34,521.20. *See Exhibit A* (Invoices).

7. In addition, Lakin Tire has performed postpetition services under the Tire Collection Agreement for which Lakin Tire has not yet issued invoices.

8. On January 18, 2019, the Debtors filed the Notice, which, among other things, identifies a group of contracts that the Debtors may seek to assume and assign in connection with the Global Asset Sale Transaction (as defined in the Notice). Exhibit A to the Notice lists the contracts at issue, together with proposed cure amounts for each.

9. The Tire Collection Agreement is included on Exhibit A to the Notice at entry no. 4212. The Debtors have scheduled the Tire Collection Agreement with a proposed cure amount of \$99,019.

10. This proposed cure amount accurately reflects the prepetition amount outstanding under the Tire Collection Agreement. However, the cure amount does not include the \$34,521.20 in unpaid postpetition invoices, nor does it reflect amounts that will become due for postpetition services that have not yet been invoiced. Sears Roebuck must pay the amounts outstanding for postpetition services before it can assume and assign the Tire Collection Agreement. *See* 11 U.S.C. § 365(b)(1)(A); *In re Washington Capital Aviation & Leasing*, 156 B.R. 167, 173 (Bankr. E.D. Va. 1993) (“Section 365(b)(1)(A) requires the debtor in possession to cure pre- and post petition lease defaults.”); *In re Rachels Indus., Inc.*, 109 B.R. 797, 811–12 (Bankr. W.D. Tenn. 1990) (“[T]he debtor, when attempting to assume under § 365, must cure both prepetition and postpetition defaults.”); *In re SIS Corp.*, 108 B.R. 608, 610 (Bankr. N.D. Ohio 1989) (“[T]he effect of contract assumption is to pay a prepetition claim postpetition and to timely cure any attendant postpetition defaults.”); *see also* 11 U.S.C. § 365(f).

11. Counsel for the Debtors has stated that the Debtors intend to continue to pay their postpetition obligations in the ordinary course until the closing on the Global Asset Sale Transaction. However, the Debtor’s counsel has not confirmed that all outstanding amounts under the Tire Collection Agreement (both invoiced and not invoiced) as of the date of the Closing of the Global Asset Sale Transaction will be paid as part of the Debtors’ cure obligation. Accordingly, Lakin Tire objects to the Notice because it omits from the cure amount the \$34,521.20 in outstanding postpetition invoices and amounts that will come due for additional postpetition services under the Tire Collection Agreement between now and the closing date.

12. Lakin Tire expressly reserves all rights with respect to the Tire Collection Agreement and the Debtors' Notice, including the right to supplement and amend this Objection or to seek payment of a cure claim that includes all unpaid postpetition obligations under the Tire Collection Agreement as of the date of the Closing.

WHEREFORE, Lakin Tire respectfully objects to the proposed cure amount for the Tire Collection Agreement, which should be \$133,540.20 plus amounts due for postpetition services yet to be invoiced.

Dated: January 26, 2019  
New Haven, Connecticut

DAY PITNEY LLP

By /s/ Joshua W. Cohen  
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*Attorneys for Lakin Tire West Incorporated*

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that the foregoing document was electronically filed with this Court on this 26th day of January, 2019, and served through the Court's CM/ECF system upon all registered electronic filers. In addition, the document was served as indicated on the attached Service List. Parties may access this filing through the Court's CM/ECF System.

/s/ Joshua W. Cohen

Joshua W. Cohen

## SERVICE LIST

### VIA EMAIL

1. Bid Notice Parties
  - a. Debtors
    - i. Rob Riecker: rob.riecker@searshc.com
    - ii. Luke Valentino: luke.valentino@searshc.com
    - iii. Mohsin Meghji: mmeghji@miiipartners.com
    - iv. General Counsel: counsel@searshc.com
  - b. Debtors' counsel
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    - vi. Gavin Westerman, Esq.: Gavin.Westerman@weil.com
  - c. Debtors' investment banker:
    - i. Brandon Aebersold and Levi Quaintance: project.blue.rx@lazard.com
2. Consultation Parties
  - a. Bank of America
    - i. Paul Leake, Esq.: Paul.Leake@skadden.com
    - ii. Shana Elberg, Esq.: Shana.Eiberg@skadden.com
    - iii. George Howard, Esq.: George.Howard@skadden.com
  - b. Wells Fargo Bank
    - i. Kevin J. Simard, Esq.: ksimardachoate.com
    - ii. Jonathan D. Marshall, Esq.: jmarshall@choate.com
  - c. Committee
    - i. Ira S. Dizengoff, Esq. : idizengoff@akingump.com
    - ii. Philip C. Dublin, Esq.: pdublin@akingump.com
    - iii. Abid Qureshi, Esq.: aqureshi@akingump.com
    - iv. Sara L. Brauner, Esq.: sbrauner@akingump.com
3. Successful Bidder Parties
  - a. Successful Bidder
    - i. Kunal S. Kamlani: kunal@eslinvest.com
    - ii. Harold Talisman: harold@eslinvest.com
  - b. Counsel
    - i. Christopher E. Austin, Esq.: caustin@cgsh.com
    - ii. Benet J. O'Reilly, Esq.: boreilly@cgsh.com
    - iii. Sean A. O'Neal, Esq.: soneal@cgsh.com

**VIA FIRST CLASS MAIL**

Transform Holdco, LLC  
c/o ESL Partners, Inc.  
Attention: Kunal S. Kamlani and Harold Talisman  
1170 Kane Concourse, Suite 200  
Bay Harbor Islands, FL 33154

Sears Holdings Corporation  
Attn: General Counsel  
3333 Beverly Road  
Hoffman Estates, IL 60179

Weil, Gotshal & Manges LLP  
Attention: Ray C. Schrock, P.C., Ellen J. Odoner, Gavin Westerman and Sunny Singh  
767 Fifth Avenue  
New York, New York 10153

Cleary Gottlieb Steen & Hamilton LLP  
Attention: Christopher E. Austin, Benet J. O'Reilly and Sean A. O'Neal  
One Liberty Plaza  
New York, NY 10006

# **EXHIBIT A**



**LAKIN TIRE WEST, INC.**

15305 SPRING AVE. • SANTA FE SPRINGS, CA 90670  
(562) 802-2752 • (800) 488-2752 • (562) 802-7584 Fax  
E-Mail: [Billing@lakintire.com](mailto:Billing@lakintire.com)

**Statement of Account**

Statement Date

1/24/19

Account Number

101828

**Bill To :**

SEARS HOFFMAN ESTATES  
3333 BEVERLY ROAD  
C3103A  
HOFFMAN ESTATES IL 60179  
United States

Document Date	Document #	Service Date	Description	Orig. Amount	Balance Due
1/21/2019	CM1854	1/21/2019	Credit Memo	(\$5,725.00)	(\$5,725.00)
1/21/2019	IN652264	1/21/2019	Invoice	\$1,485.00	\$1,485.00
1/21/2019	CI_08949	1/21/2019	Consolidated Invoice	\$38,761.20	\$38,761.20



**LAKIN TIRE**

**Remittance Slip**

Customer 101828  
SEARS HOFFMAN ESTATES

Please Call 800-488-2752 to pay by Credit Card

Make Checks Payable To:

Amount Due \$34,521.20

Amount Paid \_\_\_\_\_

Lakin Tire West  
15305 Spring Ave.  
Santa Fe Springs CA 90670  
United States



**LAKIN TIRE WEST, INC.**

15305 SPRING AVE. • SANTA FE SPRINGS, CA 90670  
(562) 802-2752 • (800) 488-2752 • (562) 802-7584 Fax  
E-Mail: [Billing@lakintire.com](mailto:Billing@lakintire.com)

# Credit Memo

#CM1854

1/21/2019

**Bill To**

SEARS HOFFMAN ESTATES  
3333 BEVERLY ROAD  
C3103A  
HOFFMAN ESTATES IL 60179  
United States

**TOTAL - Credit - DO NOT PAY**

**\$5,725.00**

**PO #**

**Shipping Method**

Fuel Surcharge

Quantity	Item	Rate	Amount
229	<b>XOM Purchase</b> January 2019	\$25.00	\$5,725.00

**Total** \$5,725.00

**This a Credit - DO NOT PAY**



## LAKIN TIRE WEST, INC.

15305 SPRING AVE. • SANTA FE SPRINGS, CA 90670  
(562) 802-2752 • (800) 488-2752 • (562) 802-7584 Fax  
E-Mail: [Billing@lakintire.com](mailto:Billing@lakintire.com)

# Invoice

#IN652264

1/21/2019

3225 SEARS HOFFMAN ESTATES

**Bill To**  
SEARS HOFFMAN ESTATES  
3333 BEVERLY ROAD  
C3103A  
HOFFMAN ESTATES IL 60179  
United States

**Ship To**  
SEARS HOFFMAN ESTATES  
3333 BEVERLY ROAD  
C3103A  
HOFFMAN ESTATES IL 60179  
United States

Terms	Due Date	Customer PO #	Shipping Method	Trailer #
Net 30	2/20/2019		Fuel Surcharge	

Notes:

Quantity	Item	Price	Amount
165	Adjustment Processing Fee January 2019	\$9.00	\$1,485.00

<b>Subtotal</b>	\$1,485.00
<b>Tax Total (%)</b>	\$0.00
<b>Shipping Cost</b>	\$0.00
<b>Total</b>	\$1,485.00

### Caution - No Warranty - No Representation

The tires sold on this invoice are sold at wholesale, in an "AS IS" condition. Lakin Tire personnel have made a brief inspection to determine remaining tread depth and any visually apparent damage. However, Lakin Tire does not know the history or use of these tires and has performed no testing, changes, alterations or repairs to the tires. The buyer should conduct his own inspection, and any tests he deems appropriate, prior to the resale to the customer for use on the highway.

No Claims for Imperfections, Shortages, Errors or any other causes will be allowed unless notice in writing is received by us within 5 days from receipt of goods. We hereby certify that these goods were produced with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.



# **LAKIN TIRE WEST, INC.**

15305 SPRING AVE. • SANTA FE SPRINGS, CA 90670  
(562) 802-2752 • (800) 488-2752 • (562) 802-7584 Fax  
E-Mail: [Billing@lakintire.com](mailto:Billing@lakintire.com)

## **CONSOLIDATED INVOICE**

CONS. INVOICE #	INVOICE DATE	TERMS
CI_08949	1/21/2019	Net 30

### **BILL TO:**

SEARS HOFFMAN ESTATES  
3333 BEVERLY ROAD  
C3103A  
HOFFMAN ESTATES, IL 60179  
United States

### **SHIP TO:**

SEARS HOFFMAN ESTATES  
3333 BEVERLY ROAD  
C3103A  
HOFFMAN ESTATES, IL 60179  
United States

### **Consolidated Invoice By Item**

ITEM	SALES DESCRIPTION	QUANTITY	RATE	ITEM TOTAL	TAX	TOTAL
ADJUST	Adjustment Tire(s)	929	0.80	743.20	9.02	752.22
ADJUST	Adjustment Tire(s)	15	0.95	14.25	0.00	14.25
ADJUST	Adjustment Tire(s)	32	3.50	112.00	0.00	112.00
RV	RV Tire(s)	68	0.80	54.40	0.00	54.40
Tire Pickup Service	Pickup(s)	259	0.00	0.00	0.00	0.00
TIRES	Passenger / Light Truck Tire(s)	36769	0.80	29,415.20	412.03	29,827.23
TIRES	Passenger / Light Truck Tire(s)	888	0.95	843.60	0.00	843.60
TIRES	Passenger / Light Truck Tire(s)	2037	3.50	7,129.50	0.00	7,129.50
TRUCKTIRE	Commercial Truck Tire(s)	35	0.80	28.00	0.00	28.00
XOM	XOM Tire(s)	229	0.00	0.00	0.00	0.00
<b>SUB TOTAL</b>						38,761.20
<b>DISCOUNT</b>						0.00
<b>FUEL SURCHARGE</b>						0.00
<b>TOTAL</b>						\$38,761.20
<b>AMOUNT PAID</b>						0.00
<b>TOTAL DUE</b>						\$38,761.20